

1 BILL NO. S-81-09- 19

2 SPECIAL ORDINANCE NO. S- 219-81

3

4 AN ORDINANCE approving contracts between
5 the City of Fort Wayne, Indiana and T & F
6 Construction Corporation and the City of
7 Fort Wayne, Indiana and Brooks Construction
8 Co., Inc. for electrical, landscaping and
9 general contracting.

10 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF
11 FORT WAYNE, INDIANA:

12 SECTION 1. That certain contracts dated September 14,
13 1981 and September 17, 1981, respectively, between the City of
14 Fort Wayne, Indiana and Brooks Construction Co., Inc. and
15 between the City of Fort Wayne, Indiana and T & F Construction
16 Corporation, for:

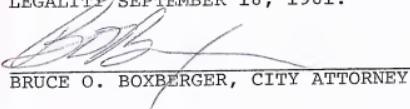
17 Broadway Streetscape project: Division I,
18 General Contractor, Brooks Construction,
19 street, curb, sidewalk, drainage, screen
walls, and paving construction; Division II,
Landscaping Contractor, T & F Construction,
tree and shrub planting, sodding, and main-
tenance; Division III, Electrical Contractor,
T & F Construction, traffic signal bases,
and underground conduit.

20 at a total cost of \$305,895.03, all as more particularly set
21 forth in said contracts which are on file in the Office of
22 Community Development and Planning and are by reference incor-
23 porated herein and made a part hereof, be and the same are in
24 all things hereby ratified, confirmed and approved.

25 SECTION 2. That this Ordinance shall be in full force
26 and effect from and after its passage and approved by the Mayor.

27 
28 COUNCILMAN

29 APPROVED AS TO FORM AND
30 LEGALITY SEPTEMBER 18, 1981.

31 
32 BRUCE O. BOXBERGER, CITY ATTORNEY

Read the first time in full and on motion by V. Ailmuth,
seconded by Gia Quinta, and duly adopted, read the second time
by title and referred to the Committee Finance (and the City
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,
Indiana, on 19, the 19 day of Sept, at 10:00 a.m. M.E.S.T.

DATE: 9-22-81

CHARLES W. WESTERMAN
CITY CLERK

Read the third time in full and on motion by V. Ailmuth,
seconded by Stew, and duly adopted, placed on its
passage. PASSED (test) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	<u>0</u>			
<u>BURNS</u>	<u>✓</u>				
<u>EISBART</u>	<u>✓</u>				
<u>GiaQUINTA</u>	<u>✓</u>				
<u>NUCKOLS</u>	<u>✓</u>				
<u>SCHMIDT, D.</u>	<u>✓</u>				
<u>SCHMIDT, V.</u>	<u>✓</u>				
<u>SCHOMBURG</u>	<u>✓</u>				
<u>STIER</u>	<u>✓</u>				
<u>TALARICO</u>	<u>✓</u>				

DATE: 10-13-81

CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)
(APPROPRIATION) ORDINANCE (RESOLUTION) No. A-219-81
on the 13th day of October, 1981.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

ATTEST:

(SEAL)

John Nuckols
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 14th day of October, 1981, at the hour of
11:30 o'clock A M.E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 15th day of Oct.
1981, at the hour of 10 o'clock A M.E.S.T.

Winfield C. Moses, Jr.
WINFIELD C. MOSES, JR.
MAYOR

S-81-09-19

BILL NO.

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON Finance TO WHOM WAS REFERRED AN
ORDINANCE approving contracts between the City of Fort Wayne, Indiana
and T & F Construction Corporation and the City of Fort Wayne, Indiana
and Brooks Construction Co., Inc. for electrical, landscaping and general
contracting

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE *Do.* PASS.

VIVIAN G. SCHMIDT, CHAIRMAN

JAMES S. STIER, VICE CHAIRMAN

MARK E. GIAQUINTA

PAUL M. BURNS

ROY J. SCHOMBURG

William L. Schmidt

Jan Sther

May 2007

Aspidoscelis gallegosae

John G. Lamm

D. 1. 2. 1

Miss Weston

10-13-81

CONCURRED IN

DATE. CHARLES W. WESTERMAN, CITY CLERK



The City of Fort Wayne

September 14, 1981

The Common Council
Fort Wayne, Indiana

SUBJECT: CONSTRUCTION CONTRACTS FOR THE BROADWAY STREETSCAPE PROJECT
AND PUBLIC PARKING LOT AT THE CORNER OF WILT AND VAN BUREN.

Councillors:

The Department of Community Development and Planning respectfully requests "Prior Approval" in order that a landscape construction contract for the Broadway Streetscape Project and Public Parking Lot be awarded on September 16 by the Board of Public Works. At the September 9 Board of Works meeting, T & F Construction was selected as the Landscape Contractor for Division II in the amount of \$18,948.

The streetscape and parking lot landscape will be completed within a ninety day construction period beginning September 16, 1981.

Special Ordinance for formal approval will be submitted in the very near future.

Yours truly,

COMMUNITY DEVELOPMENT AND PLANNING

Abraham K. Farkas

Dr. Abraham K. Farkas, Director

CITY OF FORT WAYNE

Win Moses Jr.

Win Moses, Jr., Mayor

AKF/nm

Approved:

Vivian G. Schmidt

James M. Moore

Bob Gandy

John Buckley

Ray Johnson

John D. Bunn

Samuel J. Talarico

John D. Bunn

Mark C. Gandy

Attest: *Charles W. Westerman*

Charles Westerman, City Clerk



The City of Fort Wayne

September 4, 1981

The Common Council
Fort Wayne, Indiana

SUBJECT: CONSTRUCTION CONTRACTS FOR THE BROADWAY STREETSCAPE PROJECT
AND PUBLIC PARKING LOT AT THE CORNER OF WILT AND VAN BUREN.

Councillors:

The Department of Community Development and Planning respectfully requests "Prior Approval" in order that General Contractor and Electrical Contractor construction contracts for the Broadway Streetscape Project and Public Parking Lot be awarded on September 14 by the Board of Public Works. At the September 2 Board of Works meeting, Brooks Construction Co., Inc., was selected as the General Contractor for the bid amount of \$278,237.03 and T & F Construction Corporation was selected as the Electrical Contractor for the bid amount of \$8,710.00.

The streetscape and parking lot construction will be completed within a ninety day construction period beginning September 14, 1981. The resurfacing of the street and lot and the necessary traffic and parking striping will be delayed until early spring.

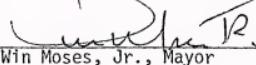
Special Ordinance for formal approval will be submitted in the very near future.

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COMMUNITY DEVELOPMENT AND PLANNING

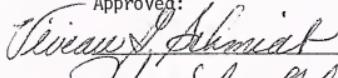
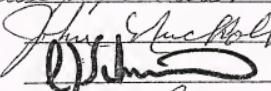

Dr. Abraham K. Farkas, Director

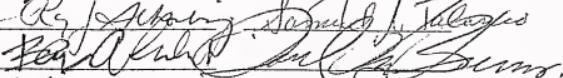
CITY OF FORT WAYNE


Win Moses, Jr., Mayor

AKF/nm

Approved:



D.J.M.



R.J. Johnson, Samuel J. Salages
Roy Johnson, Jr., City Engineer

Attest: 
Charles Westerman, City Clerk

THIS AGREEMENT is dated as of the Seventeenth day of September, in the year 1981, by and between the City of Fort Wayne, Indiana, acting by and through its

Board of Public Works
Corporation

(hereinafter called OWNER) and T & F Construction

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Division III, Sect. 1, Streetscape Landscaping-Base Bid w/ sodding & maintenance
Division II, Sect. 2, Parking Lot Landscaping-Base Bid w/ sodding & maintenance
These divisions consist of tree & shrub planting and sodding & maintenance add alternate
Division III, Traffic Signal Bases and Conduit Improvements - This division
consists of installing traffic signal bases and underground conduit.
The Project for which the Work under the Contract Documents may be the whole or only a
part is generally described as follows: Broadway Streetscape Project, HUD Project No.
P-01 MC-19-0003.

Article 3. ENGINEER

The Project has been designed by Bonar & Associates, Inc. (Street & Sidewalk Divisions) and Community Planning & Development Dept. (Landscaping Division).

who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

Strike out inapplicable.

19

3.1. The Work will be substantially completed within 80 days after the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within 90 days after the date when the Contract Time commences to run.

3.2. **Liquidated Damages.** OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER FIFTY..... dollars (\$..... 50.00) for each day that expires after the time specified in paragraph 3.1 for substantial completion until the Work is substantially complete.

Article 4. CONTRACT PRICE.

OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents an amount in current funds equal to the Cost of the Work plus a Contractor's Fee for overhead and profit, both of which shall be determined as provided below.

Article 5. COST OF WORK.

Cost of the Work shall be determined as provided in paragraphs 11.4 and 11.5 of the General Conditions, but, in addition to any limitations therein set forth, it shall not include costs in excess of any Guaranteed Maximum Contract Price as set forth in Article 6 hereof and adjusted pursuant to Article 7 hereof. Whenever any portion of the Work is to be performed for CONTRACTOR by Subcontractors, CONTRACTOR shall have identified in writing, given to OWNER prior to the Notice of Award, those portions of the Work that he proposes to subcontract, and after the Notice of Award may only subcontract other portions of the Work with OWNER's written consent.

~~(Strike out inapplicable paragraph)~~ The Contractor's Fee shall be determined as follows:

6.1. A fixed fee of dollars (\$.....) which shall be subject to increases or decreases for changes in the Work as provided in paragraph 8.1 below.

6.1. A fee based on the following percentages of the various portions of the Cost of the Work:

Payroll costs (see paragraph 11.4.1 of General Conditions) %,

Material and equipment costs (see paragraph 11.4.2 of General Conditions) %,

Amounts paid to Subcontractors (see paragraph 11.4.3 of General Conditions) %,

Amounts paid to special consultants (see paragraph 11.4.4 of General Conditions) %, and

Supplemental costs (see paragraph 11.4.5 of General Conditions) %.

No fee shall be payable on the basis of costs itemized in paragraph 11.5 of the General Conditions.

CONTRACTOR guarantees that the maximum amount payable by OWNER in accordance with this paragraph 8.1 as a percentage fee will not exceed dollars (\$.....) subject to increases or decreases for changes in the Work as provided in paragraph 8.3 below.

Article 7. GUARANTEED MAXIMUM CONTRACT PRICE.

CONTRACTOR guarantees that the maximum cost to OWNER of the Cost of the Work and the Contractor's Fee will not exceed dollars (\$.27,658.00) subject to increases or decreases for changes in the Work.

Article 8. CHANGES IN THE WORK.

The amount of any increases or decreases in the Contractor's Fee and in any Guaranteed Maximum Contract Price or Fee which results from a Change Order shall be set forth in the applicable Change Order subject to the following:

8.1. If the Contractor's Fee is a fixed fee: in the case of the net additions or revisions in the Work, any increase in the Contractor's Fee shall be determined in accordance with paragraph 11.6.2 of the General Conditions; and in the case of net decreases in the Work, the amount of any such decrease shall be determined in accordance with paragraph 11.7 of the General Conditions and any decrease in the Contractor's Fee shall be on the basis of one-half of the amount provided for in said paragraph 11.6.2 for net additions in the Work.

8.2. If the Contractor's Fee is a percentage fee not subject to any guaranteed maximum limitation: Contractor's Fee will adjust automatically as the Cost of the Work changes.

8.3. Wherever there is a Guaranteed Maximum Contract Price or Fee: in the case of net additions or revisions in the Work, the amount of any increase in the Guaranteed Maximum shall be determined in accordance with paragraphs 11.3 through 11.6, inclusive, of the General Conditions; and in the case of net deletions in the Work, the amount of any such decrease shall be determined in accordance with paragraph 11.7 of the General Conditions and any Guaranteed Maximum shall be reduced by mutual agreement.

Article 9. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. The Applications for Payment will indicate the amount of the Contractor's Fee then payable. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

9.1. *Progress Payments.* OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the ~~first~~ day of each month during construction as provided below. All such payments shall be subject to the limitations of any Guaranteed Maximum Contract Price or Fee.

9.1.1. For Cost of Work: Progress payments on account of the Cost of the Work will be made:

9.1.1.1. Prior to Substantial Completion, in an amount equal to:

..... 90 % of the Work completed, and

..... 90 % of material and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

9.1.1.2. Upon Substantial Completion, in an amount sufficient to increase the total payments to CONTRACTOR to % of the Cost of the Work less such amounts as ENGINEER shall determine in accordance with paragraph 14.7 of the General Conditions.

~~9.1.1.3. All such payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 14.1 of the General Conditions.~~

~~9.1.2. For Contractor's Fee: Progress payments on account of the Contractor's Fee will be made:~~

~~9.1.2.1. If the Contractor's Fee is a fixed fee: payments prior to Substantial Completion shall be in an amount equal to% of such fee earned to the date of the approved Application for Payment (less in each case payments previously made on account of such fee) based on the progress of the Work measured by the schedule of values provided for in paragraph 14.1 of the General Conditions, and upon Substantial Completion a payment shall be made to increase total payments to CONTRACTOR on account of his fee to% of the Contractor's Fee.~~

~~9.1.2.2. If the Contractor's Fee is a percentage fee: payments prior to Substantial Completion shall be in an amount equal to% of such fee (less in each case payments previously made on account of such fee) based on the Cost of the Work completed, and upon Substantial Completion payment shall be made to increase total payments to CONTRACTOR on account of his fee to% of the Contractor's Fee.~~

~~9.2. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.~~

Article 10. INTEREST.

All moneys not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 11. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

11.1. CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

11.2. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.

11.3. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 11.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by him for such purposes.

11.4. CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

11.5. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

11.6.

Article 12. ACCOUNTING RECORDS.

CONTRACTOR shall check all materials, equipment and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the accounting methods shall be satisfactory to OWNER. OWNER shall be afforded access to all CONTRACTOR's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the Cost of the Work and Contractor's Fee. CONTRACTOR shall preserve all such documents for a period of three years after the final payment by OWNER.

Article 13. CONTRACT DOCUMENTS.

The Contract Documents which comprise the agreement between OWNER and CONTRACTOR are attached to this Agreement, made a part hereof and consist of the following:

13.1. This Agreement (pages 1 to 5....., inclusive).

13.2. ~~Exhibit A~~ ~~Exhibit B~~ ~~Exhibit C~~ ~~Exhibit D~~ ~~Exhibit E~~ ~~Exhibit F~~ ~~Exhibit G~~ ~~Exhibit H~~ ~~Exhibit I~~ ~~Exhibit J~~ ~~Exhibit K~~ ~~Exhibit L~~ ~~Exhibit M~~ ~~Exhibit N~~ ~~Exhibit O~~ ~~Exhibit P~~ ~~Exhibit Q~~ ~~Exhibit R~~ ~~Exhibit S~~ ~~Exhibit T~~ ~~Exhibit U~~ ~~Exhibit V~~ ~~Exhibit W~~ ~~Exhibit X~~ ~~Exhibit Y~~ ~~Exhibit Z~~ ~~Exhibit AA~~ ~~Exhibit BB~~ ~~Exhibit CC~~ ~~Exhibit DD~~ ~~Exhibit EE~~ ~~Exhibit FF~~ ~~Exhibit GG~~ ~~Exhibit HH~~ ~~Exhibit II~~ ~~Exhibit JJ~~ ~~Exhibit KK~~ ~~Exhibit LL~~ ~~Exhibit MM~~ ~~Exhibit NN~~ ~~Exhibit OO~~ ~~Exhibit PP~~ ~~Exhibit QQ~~ ~~Exhibit RR~~ ~~Exhibit SS~~ ~~Exhibit TT~~ ~~Exhibit UU~~ ~~Exhibit VV~~ ~~Exhibit WW~~ ~~Exhibit XX~~ ~~Exhibit YY~~ ~~Exhibit ZZ~~ ~~Exhibit AAA~~ ~~Exhibit BBB~~ ~~Exhibit CCC~~ ~~Exhibit DDD~~ ~~Exhibit EEE~~ ~~Exhibit FFF~~ ~~Exhibit GGG~~ ~~Exhibit HHH~~ ~~Exhibit III~~ ~~Exhibit JJJ~~ ~~Exhibit KKK~~ ~~Exhibit LLL~~ ~~Exhibit MMM~~ ~~Exhibit NNN~~ ~~Exhibit PPP~~ ~~Exhibit QQQ~~ ~~Exhibit RRR~~ ~~Exhibit SSS~~ ~~Exhibit TTT~~ ~~Exhibit UUU~~ ~~Exhibit VVV~~ ~~Exhibit WWW~~ ~~Exhibit XXX~~ ~~Exhibit YYY~~ ~~Exhibit ZZZ~~ ~~Exhibit AAAA~~ ~~Exhibit BBBB~~ ~~Exhibit CCCC~~ ~~Exhibit DDDD~~ ~~Exhibit EEEE~~ ~~Exhibit FFFF~~ ~~Exhibit GGGG~~ ~~Exhibit HHHH~~ ~~Exhibit IIII~~ ~~Exhibit JJJJ~~ ~~Exhibit KKKK~~ ~~Exhibit LLLL~~ ~~Exhibit MLLL~~ ~~Exhibit NLLL~~ ~~Exhibit PPPP~~ ~~Exhibit QQQQ~~ ~~Exhibit RRRR~~ ~~Exhibit SSSS~~ ~~Exhibit TTTT~~ ~~Exhibit UUUU~~ ~~Exhibit VVVV~~ ~~Exhibit WWWW~~ ~~Exhibit XXXX~~ ~~Exhibit YYYY~~ ~~Exhibit ZZZZ~~ ~~Exhibit AAAA~~ ~~Exhibit BBBB~~ ~~Exhibit CCCC~~ ~~Exhibit DDDD~~ ~~Exhibit EEEE~~ ~~Exhibit FFFF~~ ~~Exhibit GGGG~~ ~~Exhibit HHHH~~ ~~Exhibit IIII~~ ~~Exhibit JJJJ~~ ~~Exhibit KKKK~~ ~~Exhibit LLLL~~ ~~Exhibit MLLL~~ ~~Exhibit NLLL~~ ~~Exhibit PPPP~~ ~~Exhibit QQQQ~~ ~~Exhibit RRRR~~ ~~Exhibit SSSS~~ ~~Exhibit TTTT~~ ~~Exhibit UUUU~~ ~~Exhibit VVVV~~ ~~Exhibit WWWW~~ ~~Exhibit XXXX~~ ~~Exhibit YYYY~~ 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13.5. General Conditions, (pages GC/1 to GC/49, inclusive).

SFA/4

13.6. Supplementary Conditions (pages SC/1 to SC/23, inclusive).

13.7. Specifications bearing the title **Specifications, Sections 1 thru 7 inclusive**
Sections

and consisting of 7 divisions and 12 pages as listed in the table of contents thereof.

13.8. Drawings, consisting of cover sheet and sheets numbered 1 through 30, inclusive, with each sheet bearing the following general title:

13.9. Addenda numbers 1 and 2, inclusive.

13.10. Documentation submitted by CONTRACTOR prior to Notice of Award (pages B/1 to B/10, inclusive).

13.11. Any Modifications, including Change Orders, duly delivered after execution of this Agreement.

13.12. All other items, not listed above, included in the CDBG Program, HUD Project No. B-81-MC-18-0003, Contract Documents, dated July, 1981, as prepared by Bonar & Assoc. Inc.

There are no Contract Documents other than those listed above in this Article 13. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

Article 14. MISCELLANEOUS

14.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

14.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

14.3. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

Article 15. OTHER PROVISIONS.

SRA/5

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on Thursday, September 17, 1981.

OWNER...City of Fort Wayne, Indiana
Board of Public Works

By.....

[CORPORATE SEAL]

Attest.....

Address for giving notices

(If OWNER is a public body attach evidence of authority to sign and resolution or other document authorizing execution of Agreement.)

September 17, 1981

CONTRACTOR...T. & F. Construction Corp.

By...T. L. Taber PRESIDENT

T. L. Taber
[CORPORATE SEAL]

Attest...Sandra E. Kennedy

Address for giving notices

License No.....

Agent for service of process:.....

BOARD OF PUBLIC WORKS

Thomas W. Latchem, Chairman

Roberta Anderson-Staten, Member

Betty R. Collins, Member

ATTEST:

Sandra E. Kennedy, Clerk

"NOTICE TO PROCEED"

To: T & F Construction Corp.

Date: September 17, 1981

P.O. Box 27

Project: Broadway Streetscape Project

Hagerstown, Indiana 47346

Resolution: 5922-1981

You are hereby notified to proceed in accordance with your contract dated September 17, 1981 on the project and you are to complete the project within 90 consecutive calendar days thereafter.

THEREFORE, the date for the completion of this project is December 15, 1981

OWNER:

BOARD OF PUBLIC WORKS

Thomas Latchem, Chairman

Roberta Anderson Staten, Member

Betty Collins, Member

ACCEPTANCE OF NOTICE:

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by T & F Construction Corp. this the 17th day of September, 1981.

By: J. L. Tabor

Title: PRESIDENT

THIS AGREEMENT is dated as of the day of September in the year 21

19.81..... by and between the City of Fort Wayne, Indiana, acting by and through its

Board of Public Works
Co., Inc.

(hereinafter called OWNER) and Brooks Construction
(hereinafter called CONTRACTOR)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK:

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Division I, Section I, Street & Sidewalk Improvements

Division I, Section II, Parking Lot Improvements

Division I, Section III, Paving Stone & Screenwall Area Improvements

These divisions consist of street, curb, sidewalk, drainage, screenwalls, and paving construction.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: Broadway Streetscape Project, HUD Project No. B-81-MC-18-0003
Article 2. ENGINEER

The Project has been designed by Bonar & Associates, Inc. (Street & Sidewalk Divisions) and Community Planning & Development Dept. (Landscaping Division).

who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

3.1. The Work will be substantially completed within 80 days after the date when the Contract Time commences as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within 90 days after the date when the Contract Time commences to run.

3.2. Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER dollars (\$.....) for each day that expires after the time specified in paragraph 3.1 for substantial completion until the Work is substantially complete.

Article 4. CONTRACT PRICE.

OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents an amount in current funds equal to the Cost of the Work plus a Contractor's Fee for overhead and profit, both of which shall be determined as provided below.

Article 5. COST OF WORK.

Cost of the Work shall be determined as provided in paragraphs 11.4 and 11.5 of the General Conditions, but, in addition to any limitations therein set forth, it shall not include costs in excess of any Guaranteed Maximum Contract Price as set forth in Article 6 hereof and adjusted pursuant to Article 7 hereof. Whenever any portion of the Work is to be performed for CONTRACTOR by Subcontractors, CONTRACTOR shall have identified in writing, given to OWNER prior to the Notice of Award, those portions of the Work that he proposes to subcontract, and after the Notice of Award may only subcontract other portions of the Work with OWNER's written consent.

(Strike out inapplicable paragraph)

The Contractor's Fee shall be determined as follows:

6.1. A fixed fee of dollars (\$.....) which shall be subject to increases or decreases for changes in the Work as provided in paragraph 8.1 below.

6.1. A fee based on the following percentages of the various portions of the Cost of the Work:

Payroll costs (see paragraph 11.4.1 of General Conditions) %,

Material and equipment costs (see paragraph 11.4.2 of General Conditions) %,

Amounts paid to Subcontractors (see paragraph 11.4.3 of General Conditions) %,

Amounts paid to special consultants (see paragraph 11.4.4 of General Conditions) %, and

Supplemental costs (see paragraph 11.4.5 of General Conditions) %.

No fee shall be payable on the basis of costs itemized in paragraph 11.5 of the General Conditions.

CONTRACTOR guarantees that the maximum amount payable by OWNER in accordance with this paragraph 6.1 as a percentage fee will not exceed dollars (\$.....) subject to increases or decreases for changes in the Work as provided in paragraph 8.3 below.

Article 7. GUARANTEED MAXIMUM CONTRACT PRICE.

CONTRACTOR guarantees that the maximum cost to OWNER of the Cost of the Work and the Contractor's Fee will not exceed dollars (\$.....) subject to increases or decreases for changes in the Work.

Article 8. CHANGES IN THE WORK.

The amount of any increases or decreases in the Contractor's Fee and in any Guaranteed Maximum Contract Price or Fee which results from a Change Order shall be set forth in the applicable Change Order subject to the following:

8.1. If the Contractor's Fee is a fixed fee; in the case of the net additions or revisions in the Work, any increase in the Contractor's Fee shall be determined in accordance with paragraph 11.6.2 of the General Conditions; and in the case of net decreases in the Work, the amount of any such decrease shall be determined in accordance with paragraph 11.7 of the General Conditions and any decrease in the Contractor's Fee shall be on the basis of one-half of the amount provided for in said paragraph 11.6.2 for net additions in the Work.

8.2. If the Contractor's Fee is a percentage fee not subject to any guaranteed maximum limitation: Contractor's Fee will adjust automatically as the Cost of the Work changes.

8.3. Wherever there is a Guaranteed Maximum Contract Price or Fee: in the case of net additions or revisions in the Work, the amount of any increase in the Guaranteed Maximum shall be determined in accordance with paragraphs 11.3 through 11.6, inclusive, of the General Conditions; and in the case of net deletions in the Work, the amount of any such decrease shall be determined in accordance with paragraph 11.7 of the General Conditions and any Guaranteed Maximum shall be reduced by mutual agreement.

Article 9. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. The Applications for Payment will indicate the amount of the Contractor's Fee then payable. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

9.1. *Progress Payments.* OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the day of each month during construction as provided below. All such payments shall be subject to the limitations of any Guaranteed Maximum Contract Price or Fee.

9.1.1. For Cost of Work: Progress payments on account of the Cost of the Work will be made:

9.1.1.1. Prior to Substantial Completion, in an amount equal to:

..... % of the Work completed, and

..... 90 % of material and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

9.1.1.2. Upon Substantial Completion, in an amount sufficient to increase the total payments to CONTRACTOR to % of the Cost of the Work less such amounts as ENGINEER shall determine in accordance with paragraph 14.7 of the General Conditions.

9.1.1.3. All such payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 14.1 of the General Conditions.

9.1.2. For Contractor's Fee: Progress payments on account of the Contractor's Fee will be made:

9.1.2.1. If the Contractor's Fee is a fixed fee: payments prior to Substantial Completion shall be in an amount equal to% of such fee earned to the date of the approved Application for Payment (less in each case payments previously made on account of such fee) based on the progress of the Work: measured by the schedule of values provided for in paragraph 14.1 of the General Conditions, and upon Substantial Completion a payment shall be made to increase total payments to CONTRACTOR on account of his fee to% of the Contractor's Fee.

9.1.2.2. If the Contractor's Fee is a percentage fee: payments prior to Substantial Completion shall be in an amount equal to% of such fee (less in each case payments previously made on account of such fee) based on the Cost of the Work completed, and upon Substantial Completion a payment shall be made to increase total payments to CONTRACTOR on account of his fee to% of the Contractor's Fee.

9.2. *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

Article 10. INTEREST.

All moneys not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 11. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

11.1. CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

11.2. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.

11.3. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 11.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by him for such purposes.

11.4. CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

11.5. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

11.6.

Article 12. ACCOUNTING RECORDS.

CONTRACTOR shall check all materials, equipment and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the accounting methods shall be satisfactory to OWNER. OWNER shall be afforded access to all CONTRACTOR's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the Cost of the Work and Contractor's Fee. CONTRACTOR shall preserve all such documents for a period of three years after the final payment by OWNER.

Article 13. CONTRACT DOCUMENTS.

The Contract Documents which comprise the agreement between OWNER and CONTRACTOR are attached to this Agreement, made a part hereof and consist of the following:

13.1. This Agreement (pages 1 to 5, inclusive).

13.2. ~~Exhibit A~~ N/A

13.3. Performance and other Bonds, identified as Exhibits and consisting of pages.

13.4. Notice of Award.

A

13.5. General Conditions, pages GC/1 to GC/49, inclusive.

SFA/4

13.6. Supplementary Conditions (pages SC/1 to SC/23, inclusive).

13.7. Specifications bearing the title Specifications, Sections 1 thru 7 inclusive

and consisting of 7 SECTIONS divisions and 12 pages as listed in the table of contents thereof.

13.8. Drawings, consisting of a cover sheet and sheets numbered 1 through 30, inclusive, with each sheet bearing the following general title:

13.9. Addenda numbers 1 and 2, inclusive.

13.10. Documentation submitted by CONTRACTOR prior to Notice of Award (pages B/1 to B/10, inclusive).

13.11. Any Modifications, including Change Orders, duly delivered after execution of this Agreement.

13.12. All other items, not listed above, included in the CDBG Program, HLD Project No. B-81-MC-18-0003, Contract Documents, dated July, 1981, as prepared by Bonar & ASSOC. Inc. There are no Contract Documents other than those listed above in this Article 13. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

Article 14. MISCELLANEOUS

14.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

14.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

14.3. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

Article 15. OTHER PROVISIONS.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Document have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on Monday, September 14, 1981.
OWNER: City of Fort Wayne, Indiana
Board of Public Works

By.....

[CORPORATE SEAL]

CONTRACTOR: Brooks Construction Co., Inc.

By Robert F. Brooks

[CORPORATE SEAL]

Attest: Suzanne Kores

Address for giving notices

License No.....

Agent for service of process.....

(If OWNER is a public body attach evidence of authority to sign and resolution or other document authorizing execution of Agreement.)

BOARD OF PUBLIC WORKS

Thomas W. Latchem
Thomas W. Latchem, Chairman
Roberta Anderson-Staten
Roberta Anderson-Staten, Member
Betty R. Collins
BETTY R. COLLINS, Member

ATTEST:

Sandra E. Kennedy
Sandra E. Kennedy, Clerk

"NOTICE TO PROCEED"

To: Brooks Construction Co., Inc.
1123 Barthold
Fort Wayne, IN 46808

Date: September 14, 1981
Project: Broadway Streetscape Project
Resolution: 5922-1981

You are hereby notified to proceed in accordance with your contract dated September 14, 1981 on the project and you are to complete the project within 90 consecutive calendar days thereafter.

THEREFORE, the date for the completion of this project is December 12, 1981

OWNER:

BOARD OF PUBLIC WORKS

Thomas Latchem
Thomas Latchem, Chairman

Roberta Anderson Staten
Roberta Anderson Staten, Member

Betty R. Collins
Betty Collins, Member

ACCEPTANCE OF NOTICE:

Receipt of the above NOTICE TO

PROCEED is hereby acknowledged

by Robert J. Bartholomew, Brooks Construction Inc.
this the 14 day of September
1981.

By: _____

Title: _____

5434

Norman A. Abbott
Admn. Appr. Director of Planning

DIGEST SHEET

S-81-09-19

TITLE OF ORDINANCE Broadway Streetscape Improvements

DEPARTMENT REQUESTING ORDINANCE Community Development and Planning

SYNOPSIS OF ORDINANCE The following improvements will take place as part of the

Broadway Streetscape project: Division I, General Contractor Brooks Construction,
street, curb, sidewalk, drainage, screen walls, and paving construction - \$278,237.03.

Division II, Landscaping Contractor, T & F Construction, tree and shrub planting,
sodding, and maintenance - \$18,948.00. Division III, Electrical Contractor, T & F
Construction, traffic signal bases, and underground conduit - \$8,710.00.

PRIOR APPROVAL ACQUIRED AND ATTACHED.

EFFECT OF PASSAGE Implementation of Improvements

EFFECT OF NON-PASSAGE This project has prior approval.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) \$305,895.03

ASSIGNED TO COMMITTEE (PRESIDENT) Finance Committee, Vivian G. Schmidt